

Local 80, Sheet Metal Workers International Association, AFL-CIO and Ciamillo Heating & Cooling, Inc. Case 7-CC-1238

18 October 1983

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND
DENNIS

On 31 May 1983 Administrative Law Judge William A. Gershuny issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.¹

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Local 80, Sheet Metal Workers International Association, AFL-CIO, Southfield, Michigan, its officers, agents, and representatives, shall take the action set forth in the recommended Order, as modified.

1. Substitute the following for paragraph 1(a).

"(a) Engaging in, or inducing or encouraging any individual employed by any person engaged in commerce, or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment, to use, manufacture, process, transport, or otherwise handle or work on any articles, materials, or commodities, or to refuse to perform any other services, where an object thereof is to force or require that person to cease using, handling, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with Ciamillo Heating & Cooling, Inc., or any other person."

2. Substitute the following for paragraph 1(b).

"(b) Threatening, coercing, or restraining any person engaged in commerce, or in an industry affecting commerce, where an object thereof is to

¹ We find merit in the General Counsel's exceptions and conclude that a broad order is warranted to remedy the Respondent's violation of Sec. 8(b)(4)(i) and (ii)(B) of the Act. Based on its prior violations of this section, as recited in the judge's decision, and its publicly stated intention in this case to ignore any reserve gate system, the Respondent has demonstrated a proclivity to violate the secondary boycott provisions of the Act. We shall, accordingly, modify pars. 1(a) and (b) of the recommended Order, and issue a new notice.

force or to require that person to cease doing business with Ciamillo Heating & Cooling, Inc., or any other person."

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

**NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT engage in, induce, or encourage any individual employed by any person engaged in commerce, or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment, to use, manufacture, process, transport, or otherwise handle or work on any articles, materials, or commodities, or to refuse to perform any other services, where an object thereof is to force or require that person to cease using, handling, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with Ciamillo Heating & Cooling, Inc., or any other person.

WE WILL NOT threaten, coerce, or restrain any person engaged in commerce, or in an industry affecting commerce, where an object thereof is to force or to require that person to cease doing business with Ciamillo Heating & Cooling, Inc., or any other person.

**LOCAL 80, SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION, AFL-
CIO**

DECISION

STATEMENT OF THE CASE

WILLIAM A. GERSHUNY, Administrative Law Judge: A hearing was held in Detroit, Michigan, on May 9, 1983, on complaint issued March 20, 1983, alleging violations of Section 8(b)(4)(i) and (ii) (B) of the National Labor Relations Act, as amended (the Act) based on picketing and other related conduct at the construction-site during the week of March 9, 1983.¹

Upon the entire record, including my observation of witness demeanor, I hereby make the following

¹ Although the complaint alleges only unlawful picketing at a gate reserved for neutral contractors and unlawful inducement of masonry contractor employees to cease work, the parties litigated broader issues without objection by Respondent. Accordingly, the complaint hereby is amended, on my own motion, to reflect the issues as litigated.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION, LABOR ORGANIZATION, AND AGENCY

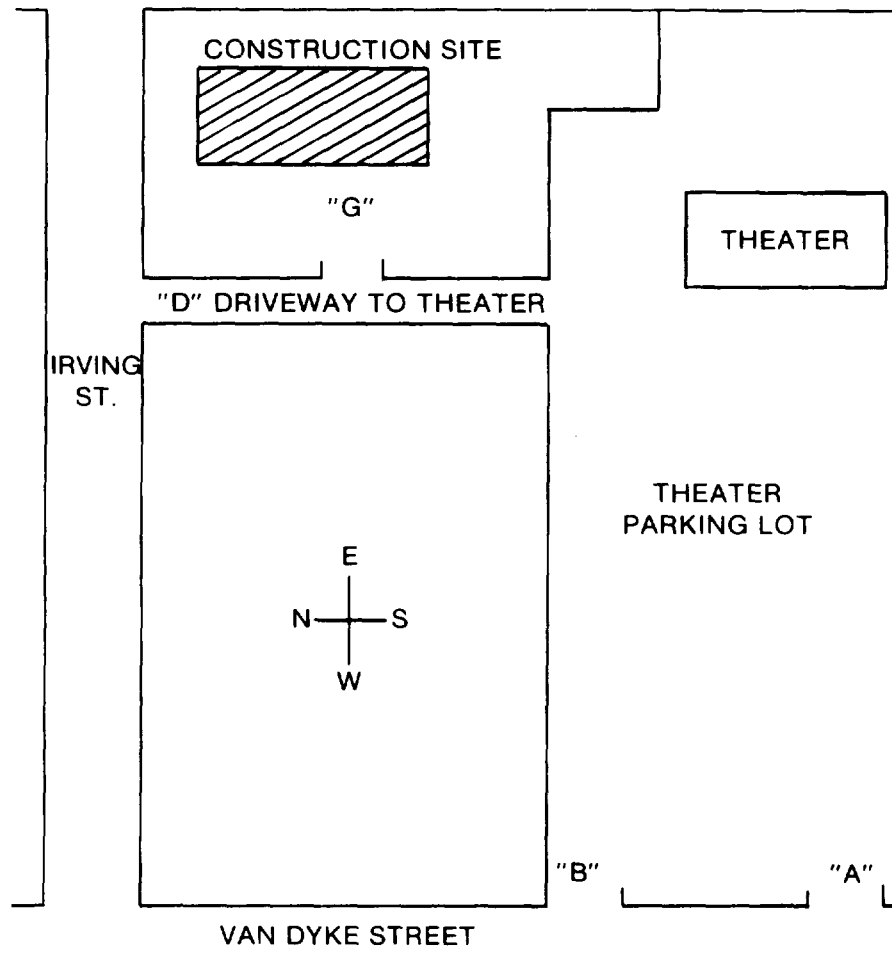
The complaint alleges, the answer admits, and I find that (a) each of the contractors at the site is an employer subject to the Act; (b) Respondent is a labor organization within the meaning of Sec. 2(5) of the Act; and (c) at all relevant times, both Business Agent Bradfield and picket line captain Mlinac were agents of the Union.

II. THE UNFAIR LABOR PRACTICES

The relevant facts, as credited,² are simple.

Commencing in late 1982, Ciamillo and other specialty contractors were engaged in the construction of a medical office building through prime contracts administered on the owner's behalf by True Management. In early March 1983 the Union tried unsuccessfully to obtain Ciamillo's signature to the local labor contract. On Monday, March 7, it commenced informational picketing at the site, with placards informing the public that Ciamillo did not pay wages and benefits established by the Union.

The site: Following is a simplified version of Jt. Exh. 1(b), a drawing of the construction site area:



Van Dyke is a 6-lane, heavily traveled street; Irving Street is a residential street. The theater owns the park-

ing lot and driveway leading to it from Irving Street. There are two entrances to the parking lot from Van

² Where a factual conflict exists, I credit the testimony of Ciamillo, Cullimore, and Saltsman based on my observation of their demeanor on the stand. They appeared candid and their testimony was convincing and

consistent with admitted facts. On the other hand, the testimony of Bradfield and Mlinac was unconvincing, incredulous at times, and in conflict, in material respects, with affidavits given to the General Counsel.

Dyke (A and B) and one from Irving (D). The entrance to the construction site (G) was opened by removing one or more of the concrete bumper strips which line both sides of the driveway. At all relevant times, Ciamillo employees and trucks entered at entrance B, proceeded east to the driveway, turned north, and entered the site at entrance G. All other trades entered from Irving Street (D), onto the driveway, and entered the site at entrance G. All picketing occurred at entrance D and, occasionally, along the driveway between, entrances D and G.

The union activity. Picketing was performed by paid members of the Union and other building trade unions; their numbers ranged from 3-15; they carried signs described above; and they engaged in no disorderly conduct or, except as noted below, discussions with contractor employees.

On Monday, March 7, pickets arrived at 7:45 a.m. and positioned themselves at entrance D. They could not identify Ciamillo employees or trucks from those of other contractors and they never inquired, then or later, whether and when Ciamillo was scheduled to work on the site. Admittedly, Ciamillo did not work at the site that day, remaining at its shop to fabricate material for the job. At no time, then or later, did the Union picket the shop. Other than an unmarked trailer for employee shelter in inclement weather, Ciamillo had no equipment or uninstalled material on the site. The union business agent went onto the site, entered the masonry contractor's trailer, and advised bricklayers that the picket line was sanctioned by the Detroit Building Trades Council. The bricklayers left the job. Other trades remained off the job until about 9 a.m., when the pickets were withdrawn.

On Tuesday, March 8, there were no pickets. Ciamillo did not work on the jobsite that day, remaining at its shop to fabricate material for the job. At 10 p.m., Ciamillo placed a sign at the Van Dyke entrance to the parking lot (B) which designated that entrance for the exclusive use of Ciamillo employees.

On Wednesday, March 9, picketing resumed at entrance D. Ciamillo's employees arrived before picketing commenced. The other trades again left the job. Ciamillo told the pickets to move to entrance B and one responded, "we'll picket wherever we want." On complaint of Ciamillo, a police officer arrived and, finding no disorderly conduct or disruption of traffic, told Ciamillo and the Union that he did not care where the Union picketed as long as traffic was not interfered with. At 10 a.m., the pickets observed Ciamillo place a sign at entrance D which designated that entrance for the exclusive use of contractors other than Ciamillo. The business agent advised Owner-Agent Cullimore that the "2-gate system" would not be honored because it was not "sanctioned" and because Ciamillo had no permits for the signs.

On Thursday, March 10, picketing continued at entrance D and no other trades reported to work. Ciamillo employees worked on the site, arriving after picketing had begun. The designated gate sign at entrance D had been removed by persons unknown.

On Friday, March 11, picketing began at 7:30 a.m. even though Ciamillo had not yet arrived on the job, and continued for part of the day. No other trades worked.

On Monday, March 14, picketing began at 7:30 a.m. and, when Ciamillo did not appear, pickets were pulled. Other trades left after pickets were withdrawn. At 6 p.m., a replacement sign was posted at entrance D, with language identical with the original.

On either Thursday or Friday, March 10 or 11, the picket line captain entered onto the construction site, approached a roofing contractor foreman, asked him if he had a union card and what he was doing there, and, when the foreman replied that he was doing some measurements on the roof, said, "we would appreciate it if you wouldn't do work at this time."

The reserved gates. Ciamillo attempted to designate two gates at the construction site, one for the primary, the other for the neutrals. As noted above, it posted the first at 10 p.m. on Tuesday at entrance B. It read: "Notice. This entrance is solely for use of Ciamillo Heating Co. and its employees. All others use the alternate gate." At or about 10 a.m. the following morning, it posted the second at entrance D. That sign, as well as its replacement, read: "Notice. This gate is for all other trades working on this job except Ciamillo Heating Co. and employees. Ciamillo employees are to use other designated entrance."

There is no evidence that the designations were breached by any employee or supplier.

The immediate entrance to the jobsite, however, was at neither entrance B nor entrance D. Those points were on property of the theater and led to its parking lot which was open to the public. The single entrance to the jobsite, used by all contractors and suppliers, primary and neutral, was at entrance G. Although there were other direct access points to the site from Irving Street or from its southerly side, Ciamillo made no effort to establish a separate entrance at either point.

Prior violations. Local 80 is no stranger to proceedings alleging violations of Section 8(b)(4). In *Sheet Metal Workers Local 80 (Sise Heating)*, 236 NLRB 41 (1978), a broad order was entered against it after an informal settlement was revoked. In *Andy's Heating & Cooling*, DS-1684 (Dec. 27, 1982), another broad order was issued against it, based on a formal settlement agreement. And, on October 15, 1982, the Court of Appeals for the Sixth Circuit, in *NLRB v. Sheet Metal Workers Local 80*, No. 82-1758, entered a consent judgment against it, based on another broad order issued by the Board. At no time has the General Counsel initiated contempt proceedings.

Discussion. For reasons set forth below, I find and conclude that the picketing here was for the unlawful object of enmeshing neutral employees in a labor dispute.

The criteria established in *Moore Dry Dock Co.*, 92 NLRB 547 (1950), to delineate primary from secondary picketing requires, inter alia, that picketing be conducted only when the primary employer is present at the jobsite. Its violation raises a presumption of unlawful motive, e.g., *Local 80 (Sise Heating)*, supra. The facts, uncontroverted, clearly establish that unlawful motive: on 4 days, March 7, 10, 11, and 14, the Union picketed when Ciamillo was not on the site; it made no effort to determine the presence of the primary employer; it failed to picket the shop where it had to know fabrication work was

being performed; it disregarded actual knowledge that the primary had not entered the site from entrance D; it publicly stated its intention of disregarding any two-gate system; and it stated its intention of picketing wherever it wished, so long as the police did not find that traffic was disrupted.

In addition, the Union specifically induced employees of neutral contractors to cease work on the job. The Board repeatedly has found unlawful any statements made by the Union to such employees which reasonably would be understood as a signal or request to engage in a work stoppage, including one that the local building trades council had authorized or sanctioned the picketing. *Los Angeles Building & Construction Trades Council (Sierra South Development)*, 215 NLRB 288 (1974). There was no reason for the Union here to enter onto the site to advise bricklayers that the picket line was sanctioned, if not to pressure neutrals. Similarly, its entry onto the site to ask a roofing foreman if he had a union card and to express its appreciation if no work was performed is direct evidence of an unlawful motive.³

Where, as here, the unlawful picketing lasted 1 week and represented a pattern of continuing conduct on the part of Local 80, a broad remedial order is appropriate. The General Counsel does not seek recovery of fees and expenses.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I issue the following

ORDER⁴

The Respondent, Local 80, Sheet Metal Workers International Association, AFL-CIO, its officers, agents, and representatives, shall

³ There is thus no need to consider whether proper reserved gates were established. It should be noted, however, that the evidence is more suggestive of designated routes to a common gate than it is of separate gates.

⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted

1. Cease and desist from

(a) Inducing or encouraging individuals employed by Clarence Gleason and Sons, Inc., or any other person engaged in commerce to strike or refuse in the course of their employment to use, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any service for Gleason with an object of forcing or requiring said employers, or Briarwood Medical-Dental Building, Inc. or True Management, Inc., or any other person to cease doing business with Ciamillo Heating & Cooling, Inc.

(b) Threatening, coercing, or restraining said persons and employers with an object of forcing or requiring said persons and employers to cease doing business with Ciamillo.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Post at its union hall and business office, copies of the attached notice marked "Appendix,"⁵ Copies of the notice, on forms provided by the Regional Director, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days thereafter in conspicuous places including places where notices to members are customarily posted. Reasonable steps shall be taken to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Deliver or mail signed copies of said notice to the Regional Director for Region 7 for posting by said persons and employers, if willing.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

by the Board and all objections to them shall be deemed waived for all purposes.

⁵ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."